

**2005 New Mexico  
Instructions for Income and Information Return  
For Pass-Through Entities  
Form PTE**

**READ THE INSTRUCTIONS CAREFULLY.** They will answer most questions, save time and may save money.  
File your return as early as possible. If you have additional questions, write to:

New Mexico Taxation and Revenue Department  
**ATTENTION:** Corporate Income and Franchise Tax  
P. O. Box 25127  
Santa Fe, New Mexico 87504-5127  
or visit our website at:  
**[www.state.nm.us/tax](http://www.state.nm.us/tax)**

**GENERAL INSTRUCTIONS**

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**ENTITIES REQUIRED TO FILE A  
NEW MEXICO INCOME AND  
INFORMATION RETURN FOR  
PASS-THROUGH ENTITIES**

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Corporations electing to be taxed as S corporations for federal income tax purposes, or any partnership, joint venture, common trust fund, limited association, pool or working agreement, limited liability company or any other combination of persons or interests required to file a federal partnership return of income must file a New Mexico *Income and Information Return for Pass-Through Entities* (PTE) if the entity is registered to do business in the state, transacts business in, into or from the state, or derives any income from property or employment within the state.

**EXCEPTION:** The following entities are exempt and are not required to file a New Mexico *Income and Information Return for Pass-Through Entities*:

- insurance companies and reciprocal or inter-insurance exchanges which pay a premium tax to New Mexico;
- estates and trusts;
- investment partnerships, effective for tax years beginning on or after January 1, 2002, and
- rural electric cooperatives established under the Rural Electric Co-

operative Act (Sec. 62-15-28 NMSA 1978).

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**ENTITIES REQUIRED TO PAY THE  
NEW MEXICO FRANCHISE TAX**

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All S corporations engaging in business in New Mexico and every domestic or foreign corporation having or exercising its corporate franchise in this state, **whether actively engaged in business or not**, must file a New Mexico *Income and Information Return for Pass-Through Entities* and pay the \$50 franchise tax even if no income tax is due. This includes "disregarded" corporations doing business in New Mexico. The only exceptions are:

- corporations exempt from federal income tax under the Internal Revenue Code that have no unrelated business income;
- insurance companies and reciprocal or inter-insurance exchanges which pay a premium tax to New Mexico, and
- rural electric cooperatives established under the Rural Electric Cooperative Act.

Limited liability companies that are required or elect to file a Federal S Corporation Income Tax Return pay the New Mexico Franchise Tax.

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**WHICH RETURN TO FILE**

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FISCAL YEAR TAXPAYERS must file a 2005 return for fiscal years beginning in 2005 and ending in 2006.

If your business does not file a New Mexico Income and Information Return for Pass-Through Entities (PTE), New Mexico may require you to file one of the following forms for New Mexico instead:

- New Mexico Corporate Income and Franchise Tax Return (CIT),
- New Mexico Personal Income Tax Return (PIT-1), or
- Fiduciary Income Tax Return (FID-1)

Each owner of the partnership, limited liability corporation, S corporation or similar business association must include his or her share of the pass-through entity income on the New Mexico personal or corporate income tax return.

A Real Estate Investment Trust (REIT), which does business in New Mexico and files a federal Form 1120-REIT, must file a New Mexico PTE return.

Every entity having income from activities or sources within New Mexico that is required to file a Federal Corporation Income Tax Return or equivalent return

must file a New Mexico Corporate Income and Franchise Tax Return. These include all corporations organized under the laws of the state of New Mexico and corporations exempt from federal income tax under the Internal Revenue Code which have unrelated business income.

A single-owner LLC or similar organization doing business in New Mexico, who is required to or elects to file a federal Form 1040 Schedule C instead of a federal corporate income tax return or a federal pass-through entity return, must file a New Mexico personal income tax return Form PIT-1. No franchise tax is due.

Estates and trusts are subject to the New Mexico personal income tax. Except for grantor trusts, the fiduciary for an estate or trust must file Form FID-1, *Fiduciary Income Tax Return*.

Each beneficiary of an estate or trust must include his or her share of the estate or trust income on the New Mexico personal or corporate income tax return even if the estate or trust was not required to file Form FID-1.

Note: All New Mexico forms are available from any New Mexico Taxation and Revenue Department district office, or you may request forms by calling (505) 827-2206 (not a toll-free number). Forms, instructions and informational brochures are also available on the Department's Internet home page. Our address is: [www.state.nm.us/tax](http://www.state.nm.us/tax).

## FILING FOR NONRESIDENT OWNERS

Except for publicly traded partnerships\*, a pass-through entity must withhold and pay income tax for all nonresident owners who have not provided Form PTE-TA, *New Mexico Nonresident Owner Income Tax Agreement*. The filing of the PTE return and the payment of withholding tax for the nonresident owner fulfill the nonresident owner's obligation to file an income tax return. A nonresident owner with income from

other sources within New Mexico must still file a separate income tax return. See page 9 of the instructions for completing the nonresident owner's tax agreement.

\*Beginning with tax year 2005, publicly traded partnerships are exempt from the requirement of withholding tax from each nonresident partner's income.

Please contact Administrative Resolution and Services Bureau at (505) 827-0825 for details on PTE filing requirements.

## REQUIRED ATTACHMENTS TO THE FORM PTE

**NOTE:** We can process your return more quickly if you submit your forms and attachments in the following sequence:

- **PTE Form:** *New Mexico Income and Information Return for Pass-Through Entities*.
- **PTE-1:** *Income Taxable to Owners*, computing the total of New Mexico taxable income applicable to all owners.
- **PTE-A:** *New Mexico Apportionment Factors*, if the entity has income from sources both inside and outside New Mexico.
- **PTE-B:** *Allocated Nonbusiness Income Taxable to Owners*, if the entity has nonbusiness taxable income.
- **PTE-C:** *Allocated and Apportioned Income Taxed to S Corporations*, if the entity is an S corporation with federal taxable income.

- **PTE-D:** *Owner Information*, disclosing each owner's name, address, whether or not a resident, social security number or FEIN, profit-percentage, total New Mexico taxable income, and withholding tax paid.
- Either **federal Form 1120S, page 1 and Schedule K**, or **federal Form 1065, page 1 and Schedule K**.

**NOTE:** If any of these forms is omitted, the New Mexico return is incomplete.

If your return shows a balance due, complete Form PTE-PV, Payment Voucher, to include with your check or money order.

## Other Forms or Attachments You May Have To File

**All annual information returns and withholding statements.** Attach Form(s) W-K 2005, *New Mexico Income and Withholding from Pass-Through Entity*, federal Form 1099-MISC or equivalent, or New Mexico Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, if reporting amounts withheld on lines 13 or 14, Form PTE.

A copy of the **approved federal extension or the approved New Mexico extension** if the return is filed after the original due date or automatic federal extension date. If a copy is omitted, a late-filing penalty will be assessed.

**Federal Forms and Schedules.** The Department may require you to furnish a true and correct copy of your federal tax return and attachments.

## CORPORATE INCOME TAX RATES

Net Taxable Income	Tax
Not over \$500,000 .....	4.8% of net taxable income
Over \$500,000 but not over \$1,000,000 .....	\$24,000 plus 6.4% of the ..... excess over \$500,000
Over \$1,000,000 .....	\$56,000 plus 7.6% of the ..... excess over \$1,000,000

To claim approved film production tax credit, attach **Form RPD-41228, Film Production Tax Credit Claim Form**. This credit is refundable.

Refundable Approved New Mexico Filmmaker Tax Credit requires **Form RPD-41303, New Mexico Filmmaker Tax Credit Claim Form**.

See *Available Credits* on page 4 for a description of the **attachments required to claim any non-refundable credits**. For more information on all business-related credits, see publication FYI-106, *Claiming Tax Credits for CRS Taxes & Business-Related Income*, or contact your local district office.

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## PAYMENT OF THE PASS-THROUGH ENTITY TAXES

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Complete Form PTE-PV, attach your payment and mail the return, payment voucher, payment and required attachments to:

**Taxation & Revenue Department  
P.O. Box 25127  
Santa Fe, New Mexico 87504-5127**

Make your check or money order payable to New Mexico Taxation and Revenue Department. Do not mail cash to pay the pass-through entity taxes.

To avoid misapplication of funds write "2005 PTE" and your federal employer identification number on the check or money order.

A check that is not paid by the financial institution on which it is drawn does not constitute payment, and a minimum penalty of \$20 is assessed in addition to other applicable penalties and interest.

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## DUE DATE

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For S corporations that file on a calendar-year basis, the 2005 New Mexico *Income and Information Return for Pass-Through Entities* is due on or before

March 15, 2006, with payment of taxes due. For fiscal-year filers, the return is due on the fifteenth day of the third month after the end of the fiscal year.

For partnerships that file on a calendar-year basis, the 2005 New Mexico *Income and Information Return for Pass-Through Entities* is due on or before April 17, 2006. For fiscal-year filers, the return is due on the fifteenth day of the fourth month after the end of the fiscal year.

A New Mexico income tax return and tax payment are timely if the United States Post Office postmark on the envelope bears a date on or before the due date. If the due date falls on a Saturday, Sunday, state or national legal holiday, the return is timely if the postmark bears the date of the next business day. Delivery through a private delivery service is timely if the date recorded or marked by the private delivery service is on or before the due date.

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## EXTENSION OF TIME TO FILE

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The Taxation and Revenue Department accepts an extension of time granted by the Internal Revenue Service. A federal extension requiring approval must accompany the Form PTE at the time of filing.

If the entity needs an extension of time to file the New Mexico Form PTE but has not obtained a federal extension, or if additional time to file the New Mexico return is needed beyond the federal extension date, the entity should request an extension by letter or by filing New Mexico Form RPD-41096, *Extension of Time To File* on or before the due date of the return.

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## INTEREST AND PENALTIES

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If the entity does not pay its New Mexico pass-through entity income, withholding, or franchise tax when due, interest is assessed at the rate of 15% per year, calculated at a daily rate of .041% per day on the amount of tax due. **Interest**

**accrues even if the entity obtains an extension of time to file a return.** The formula for calculating interest is:

$$\text{Tax due} \times .00041 \times \text{number of days late} = \text{interest due.}$$

In addition, if a return is not filed or tax remains unpaid when due because of negligence or disregard of rules or regulations, but without intent to defraud, the entity is liable for a penalty of 2% per month, or partial month, from the date the return was due, not to exceed 10% of the amount of tax due or a minimum of \$5.00, whichever is greater. The penalty does not apply if there is an extension of time and the tax is paid by the extended due date. Calculate this penalty by multiplying the tax due by 2% times the number of months (including any partial month as a full month) past the due date or extended due date.

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## TENTATIVE PAYMENTS

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Taxpayers may make tentative payments to avoid accrual of interest on taxes due by completing PTE-PV. Mail Form PTE-PV and payment to the address on the front cover. Note: No quarterly estimated payments are required on franchise or withholding taxes due.

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## AMENDED RETURNS

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Submit an amended return on Form PTE for the year being amended and check the "amended return" box.

If additional tax is due, send payment for the full amount, including interest calculated from the date the original return was due and any applicable penalty.

If the New Mexico amended return reports changes as the result of filing an amended federal return, attach copies of the applicable federal forms and schedules. In all other cases, attach an explanation of the changes. If the New Mexico amended return shows changes as the result of a Revenue Agent Report (RAR), the changes must be reported within 90 days of the date the federal

adjustments are final. Attach a copy of the RAR (Revenue Agent's Report).

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## LINE INSTRUCTIONS FOR COMPLETING FORM PTE

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**Computerized schedule(s) will NOT be accepted in lieu of completing the appropriate forms, except that computerized forms will be accepted for Schedule PTE-D if more than eleven owners are reported. All applicable line items on Form PTE and Schedules PTE-1, PTE-A, PTE-B, PTE-C, PTE-D, either Federal Form 1120S or Federal Form 1065 and Schedule K, must be completed for the return to be processed.**

**NOTE:** References to federal form line numbers correspond to the most recent federal forms as of the date of this printing. If the references do not correspond to the federal form, use the applicable line from the federal form for the item described.

Round all dollar amounts to the nearest whole dollar.

Complete the taxpayer information at the top of the Form PTE. Type or print the correct name, address, zip code and identification numbers in the spaces provided. Indicate if the return is an original or amended return and if the reporting entity is taxed federally as a partnership or an S Corporation by marking the appropriate box. If the return is being filed after the due date, enter the approved extended due date.

Enter the **NAICS Code (North America Industrial Classification System)**. The business activity code reported for New Mexico filing purposes will be the same as reported for federal purposes. If you don't know your NAICS code, refer to the instructions for federal Forms 1120 and 1120-A. Federal forms and instructions can be downloaded from the IRS web site, [www.irs.gov](http://www.irs.gov).

**NOTE:** The Department cannot process a return without the Federal Employer Identification Number (FEIN). Failure to provide the FEIN will result in processing delays and may cause the return to be rejected.

If the entity does not have a New Mexico CRS identification number, an application for a New Mexico CRS identification number, Form ACD-31015, *Application for Business Tax Identification Number*, may accompany the tax return when filed.

Fiscal-year or short-year filers should enter beginning and ending dates (month and year only). No entry is required for calendar year-filers.

Answer general information questions A through D.

**LINES 1 THROUGH 4:** These lines are to be used only by an S corporation that pays federal income tax on capital gains and passive income. An S corporation with income subject to federal tax must also compute New Mexico income tax on lines 1 through 4. IF THE CORPORATION HAS NO INCOME SUBJECT TO FEDERAL TAX, SKIP LINES 1 THROUGH 4, AND GO TO LINE 5.

Calculate tax due on line 2 using the taxable income figure on line 1 and the rate table on page 2.

**LINE 5:** Enter the total withholding tax for all nonresidents computed on Schedule(s) PTE-D.

**LINE 6:** Enter total non-refundable credits taken and indicate the type of credit taken. Include appropriate documentation for the credits claimed against your tax due.

An S corporation with income subject to federal tax may also be eligible for the following non-refundable corporate income tax credits: Intergovernmental Business Tax Credit, Corporate-supported Child-Care Credit, Business Facility Rehabilitation Credit, Cultural Property Preservation Credit, Technology Jobs "Additional" Tax Credit, Welfare-to-Work Tax Credit, Rural Job Tax Credit, Credit for Electronic Identification Card Readers, Credit for Produced Water, Renewable Energy Production Tax Credit and the Land Conservation Incentives Tax Credit. These credits may be claimed against corporate income tax.

A partnership or S corporation may claim certain non-refundable credits against the owner's withholding tax reported on Schedule(s) PTE-D: Rural Job Tax Credit, Investment Credit, Research and Development Small Business Tax Credit, and Technology Jobs "Basic" Tax Credit. A description of the required attachments needed to document the claim for one of the non-refundable credits is listed below. For more information on business-related credits, see publication FYI-106, *Claiming Tax Credits for CRS Taxes & Business-Related Income*.

To calculate the amount that may be claimed for any tax year, refer to the claim form or supporting instructions for the non-refundable credit.

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## AVAILABLE CREDITS

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**Rural Job Tax Credit.** To claim approved credit on your Form PTE, you must attach the *Rural Job Tax Credit Claim Form*, **RPD-41243**.

**Technology Jobs Tax Credit.** To claim approved credit, attach the *Technology Jobs Tax Credit Claim Form*, **RPD-41244**.

**Investment Credit.** To claim approved credit, attach the *Investment Credit Claim Form*, **RPD-41212**.

Attach **Form CIT-3, Corporate Child Care Credit**, to claim the corporate-supported child care tax credit.

**Form PIT-4, Cultural Property Claim**, and related **Historic Preservation Division Certification** are needed to claim the Preservation of Cultural Property credit on Form PTE.

**Form PIT-5, Qualified Business Facility Rehabilitation**, is needed to claim the Qualified Business Facility Rehabilitation credit for building renovations within New Mexico enterprise zones.

**Certification from the New Mexico Department of Labor** is needed to claim the **Credit for Welfare-to-Work Program**.

**Credit for Produced Water** requires the *Credit for Produced Water Claim Form*, **RPD-41221**.

**Credit for Electronic Identification Card Reader** requires certification by the taxpayer. Complete **Form RPD-41246**.

**Job Mentorship Tax Credit** requires Form **RPD-41281**, the *Job Mentorship Tax Credit Claim Form* and a Form **RPD-41280**, *Job Mentorship Tax Credit Certificate* for each qualified student the taxpayer employed during the tax year.

**Intergovernmental Business Tax Credit** requires a statement establishing entitlement to the credit with proof of payment of tax to an Indian nation, tribe or pueblo on which the credit is based.

**Renewable Energy Production Credit.** To claim approved credit, attach Form **RPD-41227**, *Renewable Energy Production Tax Credit Claim Form*.

**Land Conservation Incentives Tax Credit.** To claim approved credit, attach **Form RPD-41282**, *Land Conservation Incentives Tax Credit Claim Form* and the **letter received from the Energy Minerals and Natural Resources Department** certifying treatment as a qualified donation.

**Research and Development Small Business Tax Credit** requires Form **RPD-41298**, *Research and Development Small Business Tax Credit Claim Form*.

For more information on business-related credits, see publication FYI-106, *Claiming Tax Credits for CRS Taxes & Business-Related Income*, download the forms from the TRD web site at [www.state.nm.us/tax](http://www.state.nm.us/tax) or call (505) 827-0867.

**LINE 8: Every domestic or foreign entity taxed as a corporation must pay the \$50 franchise tax if it:**

1. transacts business in, into or from New Mexico;
2. derives income from any property or employment within this state, or
3. has or exercises its corporate franchise in New Mexico, whether engaged

in active business or not.

**Corporations electing to be treated as S corporations are not exempt from franchise tax.**

The \$50 franchise tax is due for each tax year, including short years. The franchise tax may not be prorated based on a short-year return.

**REMINDER: It is your responsibility to comply with all additional filing requirements imposed by the New Mexico Public Regulation Commission. For information call (505) 827-4508.**

**LINE 12:** Enter the total amount of all tentative payments and amounts applied from prior year. Check the appropriate box(es) indicating the source of the payment(s).

**LINE 13:** Enter amounts withheld from a pass-through entity or other source, other than a remitter (payer) of oil and gas proceeds. Attach a copy(ies) of Form W-K 2005, *New Mexico Income and Withholding from Pass-Through Entity*, or other annual statement of withholding.

**LINE 14:** Enter amounts withheld from a remitter (payer) of oil and gas proceeds. Attach a copy(ies) of federal Form 1099-MISC or equivalent, or New Mexico Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*.

**LINE 15:** Enter the total of refundable approved film production tax credit claimed on Form RPD-41228 or New Mexico filmmakers' tax credit claimed on Form RPD-41304. You must attach Form RPD-41228, *Film Production Tax Credit Claim Form* or Form RPD-41304, *New Mexico Filmmakers' Tax Credit Claim Form* or your claim will be denied. An amount in excess of the company's tax liability will be refunded.

The film production tax credit is available for 15% of direct production expenses subject to state taxation in New Mexico for films and commercial audio-visual productions made in New Mexico. Excluded from the credit are costs for which the film production company has

already issued a nontaxable transaction certificate under Section 7-9-86 NMSA 1978. The credit covers postproduction expenditures directly attributable only to services performed in New Mexico and subject to taxation here. To obtain approval for the credit, first apply to the New Mexico Film Office of the Economic Development Department. Once approved, the film production company may apply to the Taxation and Revenue Department for approval of the credit. See the *Application for Film Production Tax Credit*, Form RPD-41229.

Beginning on January 1, 2005, the New Mexico filmmakers' tax credit is available for 5% of certain direct production expenditures made in New Mexico and directly attributable to the production in New Mexico of a film. Excluded from the credit are costs for which the film production company has already issued a nontaxable transaction certificate under Section 7-9-86 NMSA 1978. To obtain approval for the credit, first apply to the New Mexico Film Office of the Economic Development Department. When it receives approval from EDD, the film production company may apply for Taxation and Revenue Department approval of the credit. See the *Application for New Mexico Filmmakers Tax Credit*, Form RPD-41303 for details.

**LINE 17a:** Indicate the amount of overpayment you want applied to 2006 on line 17a. If an amount is not indicated, a refund of any overpayment will be issued.

### **Refund Express**

If you request an amount to be refunded to you on line 17b, you may wish to have your tax refund deposited directly into your bank account through Refund Express. To choose Refund Express, complete the "Refund Express" portion on page 1 of the Form PTE. All fields are required. Complete the bank routing number, the account number, and you *must* complete the type of account. Failure to complete all three fields will cause your Refund Express request to be denied, and the Department will mail you a paper check.

The Department will mail you a paper

check if your bank does not accept your Refund Express information, or if your return or refund requires adjustment.

Refund express is available for deposits to the taxpayer's account *only*. **Taxpayers may not request the funds to be deposited into the account of another payee.**

### Why Use Refund Express?

- Avoid delays that may occur in mailing a check. Refund Express does not guarantee that you will receive your refund check earlier, however - only that when the check is issued, it will reach the bank more quickly.
- Payment is more secure. There is no check to get lost.
- More convenient. No trip to the bank to deposit your check.
- Saves tax dollars. A refund by direct deposit costs less than a check.

### What is the Routing Number?

The routing number is for bank identification and **must be nine digits**. If the first two digits are not 01 through 12 or 21 through 32, the system will reject the direct deposit and you will receive a check. On the sample check on this page the routing number is 211500151.

Your check may state that it is payable through a bank different from the financial institution where you have your checking account. If so, do not use the routing number on that check. Instead, contact your financial institution for the correct routing number to enter on this line.

### Entering Your Account Number

Your account number can be up to 17 characters. Include hyphens but omit spaces and special symbols. Enter the number from left to right. Leave unused boxes blank. On the sample check the account number is 2015551517. **Do not** include the check number.

You *must* indicate the **type of account**. Enter "C" if the account is a checking account, and "S" if the account is a savings account. This field is required.

**Caution:** Verify that the information you enter is correct and that your financial institution will accept a direct deposit made payable to the name on the PTE return. **Note:** Taxation and Revenue is not responsible if a financial institution refuses a direct deposit.

**SIGNATURE. The return must be signed and dated by an officer or manager of the entity.** Any person, other than an employee of the entity, preparing the return for compensation must also sign the return on the line provided and indicate the preparer's address, telephone number and the date signed. A preparer other than an employee of the corporation must enter the preparer's New Mexico CRS identification number or, if the preparer does not have a New Mexico CRS identification number, the preparer's social security number or federal PTIN.

A signature stamp does not constitute a valid signature. An improperly signed or unsigned return will be considered invalid for filing purposes, and penalty and interest may be assessed.

## SCHEDULE PTE-1 LINE INSTRUCTIONS

### LINES 1 - 12. INCOME TAXABLE TO OWNERS

**Line 1.** Enter the ordinary income or loss as recognized from federal tax return Form 1065, Schedule K, or Form 1120S, Schedule K.

**Line 2.** Except for guaranteed payments to partners, enter the summation of all other income or losses recognized on federal tax return Form 1065, Schedule K, or Form 1120S, Schedule K.

**Line 3.** Enter interest income from non-New Mexico state and local bonds not subject to federal income tax under IRC Section 103.

**Line 5. Interest from U.S. government obligations.** Interest or dividend income from U.S. government obligations is deductible from the corporation's taxable income only if, and to the extent that, it was included in taxable income on line 1. Expenses related to income from U.S. obligations must be subtracted and the net amount entered.

**NOTE:** Income from Fannie Mae, Ginnie Mae, Freddie Mac and other U.S. guarantee entities is not deductible. Income from repurchasing agreements of U.S. obligations (REPOs) is not deductible. Interest on notes issued by the Federal Home Loan Bank obligations are deductible, but not dividends issued by the Federal Home Loan Bank. That portion of income paid by mutual funds, unit investment trusts, and simple trusts which is derived from investments in U.S. obligations may be deducted.

Interest income from bonds issued by the state of New Mexico or its political subdivisions may also be deducted on this line to the extent that income was included in federal taxable income.

**Line 6.** Enter the allowable deductions recognized on the federal tax return Form 1065, Schedule K, or Form 1120S, Schedule K.

**PARTNERSHIP'S NAME**  
123 Main Street  
Anyplace, NM 87000

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_

ANYPLACE BANK  
Anyplace, NM 87000

For \_\_\_\_\_

**Routing Number** 211500151

**Account Number** 2015551517

**1540**  
15-00000000

**Do not include the check number**

**1540**

**Line 7.** Enter total allocated income from PTE-B, column 1, line 8, if applicable.

**Line 9.** Enter the **Average New Mexico Percentage** from PTE-A, line 5.

**Line 11.** Enter New Mexico allocated income from PTE-B, column 2, line 9, if applicable.

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## SCHEDULE PTE-A LINE INSTRUCTIONS

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### LINES 1 - 5. APPORTIONMENT OF INCOME

PTE-A must be used by an entity to apportion its income from the entity's regular trade or business activities when income is derived from both inside and outside New Mexico.

**“Apportionable income” means income arising from transactions and activities in the regular course of an entity’s trade or business. Apportionable income includes income from both tangible and intangible property if the acquisition, management or disposition of the property constitutes integral parts of the entity’s regular trade or business. It includes investment income related to or used in the entity’s overall business operations. The following sources of income are considered apportionable income and must be included:**

- Dividend income from the investment of working capital or dividend income from an investment which is functionally connected to the entity's trade or business.
- Interest income from the investment of working capital, or interest income from capital investments used in the overall business operations, or interest income from an investment which is functionally connected to the entity's trade or business.
- Royalty income and fees from patents, copyrights, franchises, trademarks

and licenses developed in the regular course of the entity's trade or business, or royalty income and fees from a product or mineral interest used in the regular course of the entity's trade or business.

- Rental or subrental income from property purchased, leased or used in the regular course of the entity's trade or business.
- Gains or losses from the sale of assets used in the regular course of the entity's trade or business or assets sold which had been treated as business assets in prior years.
- Income from a partnership or non-corporate entity engaged in a related business activity.

Complete lines 1 through 5 of PTE-A.

Calculate each percentage to four decimal places (example, 22.4653%). Enter on PTE-1, line 9.

The average percentage on line 5 must be supplied to all owners of the entity.

**LINE 1. Property Factor.** This factor is a percentage determined as follows:

**Divide:** The average value of the real and tangible personal property owned or rented and used in New Mexico during the tax year to produce apportionable income (column 2).

**By:** The average value of all real and tangible personal property owned or rented everywhere and used during the tax year to produce apportionable income (column 1). If the percentage is negative, enter zero.

Property shall be valued according to the following rules:

Inventory shall be valued according to the valuation method used for federal income tax purposes.

Value property owned during the tax year at its original cost for federal income tax purposes (prior to federal adjustments) at the time of acquisition by the taxpayer and adjusted by subse-

quent capital additions, improvements and partial dispositions.

Value property which was rented from others at eight (8) times the net annual rental rate. The net annual rate is the annual rent paid less any annual rent received from subrentals of the same property. If property owned by others is used by the entity at no charge or rented by the entity at a nominal rate, the net annual rental rate is determined on the basis of a reasonable market rental rate for the property.

Determine the average value of property by adding the total value of property held by the taxpayer at the beginning of the tax period to the total value of property held at the end of the tax period. Divide by two.

A taxpayer may be required to compute an average value on a monthly basis if the Department determines that a monthly average is necessary to correctly reflect the average value of the taxpayer's property.

**LINE 2. Payroll Factor.** This factor is a percentage determined as follows:

**Divide:** The total amount paid as compensation to employees in New Mexico during the tax year (column 2)

**By:** The total amount paid as compensation to employees everywhere during the tax year (column 1).

“Compensation” means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Only amounts paid directly to employees are included in the payroll factor. “Employees” include leased employees where the taxpayer is considered an employer for payroll tax purposes, but “employees” are not independent contractors to whom the taxpayer issues federal Form 1099.

Only compensation that is attributable to business operations subject to apportionment is included in the payroll factor.

Compensation of any employee whose primary activities relate to the production of nonbusiness income is excluded

from the payroll factor but may be included as a related expense of the allocated activity.

**LINE 3. Sales Factor.** This factor is a percentage determined as follows:

**Divide:** The total gross receipts attributable to New Mexico during the tax year, excluding returns, allowances and allocated income (column 2)

**By:** The total gross receipts everywhere during the tax year, excluding returns, allowances and allocated income (column 1). If the percentage is negative, enter zero.

“Gross receipts” means all income earned from transactions and activities in the regular course of business, including income from licensing of intangible personal property.

Sales of tangible personal property are New Mexico sales if:

A. the property is delivered or shipped to a purchaser, other than the United States government, within the state regardless of the f.o.b. point or other conditions of the sale, or

B. the property is shipped from an office, store, warehouse, factory or other place of storage in this state and

1. the purchaser is the United States government, or

2. the taxpayer is not taxable in the state of the purchaser.

Sales other than sales of tangible personal property are New Mexico sales if:

A. the income-producing activity was performed in New Mexico, or

B. the income-producing activity was performed both inside and outside New Mexico, but a greater proportion was performed within New Mexico than in any other single state (the proportion shall be determined by the cost of performance in each state), or

C. the gross receipts were from the rental, lease, licensing or any other use of either real or tangible personal property during the time the property was in New Mexico, or

D. the gross receipts were from the performance of personal services in New Mexico.

**LINES 4, 4a and 5. Total Factors.** New Mexico uses an evenly weighted three-factor formula for all taxpayers except manufacturers. Taxpayers whose principal activity is manufacturing may use a four-factor formula (sales x 2, plus property, plus payroll) for tax years beginning on or after January 1, 1995, and before January 1, 2011. Once elected, the manufacturer must continue to use the four-factor method for a total of three consecutive tax years covering at least 36 calendar months. “Manufacturing” means for the purposes of electing the four-factor apportionment method, combining or processing components or materials to increase their value for sale in the ordinary course of business. Manufacturing does not include construction, farming, processing natural resources and most power generation\*. A taxpayer may not use this option unless: (a) its tax liability is greater than it would have been for the previous year if the same apportionment method was used, **or** (b) the taxpayer has increased its combined property and payroll factor percentages in the state over its 1991 levels.

The election to use the four-factor method must be made in writing no later than the filing date of the first return to which the election will apply. Statutory authority for this elective method is in Section 7-4-10(B) NMSA 1978.

**Qualified manufacturers** electing the four-factor method should complete the statements on line 4a and make the following adjustments when calculating the New Mexico apportionment percentage on the Schedule PTE-A:

Line 3, Sales Factor. Divide column 2 by column 1 and multiply the result by 200, not 100.

Line 5, Average Percent. Divide the total factors on line 4 by 4.

#### **Elimination of Factor(s)**

If the entity has not elected or is not eligible to use the four-factor method of apportionment, and the denominator (column 1) of one or more of the three factors (property, payroll or sales) is zero or less than 3% of net income, it may exclude that factor or factors with-

out advance approval from the Department. Use the number of significant factors included to compute the average of the factors.

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### **SCHEDULE PTE-B LINE INSTRUCTIONS**

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#### **LINES 1 - 9. ALLOCATED NONBUSINESS INCOME TAXABLE TO OWNERS**

PTE-B must be used by entities to allocate income not connected to the entity's regular trade or business.

Direct and indirect expenses related to allocated income must be deducted from the related income. Expenses related to allocated income are determined by the entity's books and records. If the entity's books and records do not reflect proper amounts for expenses, the entity may rely on other reasonable methods.

“Commercial domicile” means the principal place from which the taxpayer's trade or business is directed or managed.

Enter the following information on the appropriate lines of PTE-B to allocate income:

**Line 1. Allocated Nonbusiness Dividends.** Column 2: Total amount in Column 1 is allocated to New Mexico if the taxpayer's commercial domicile is in New Mexico.

**Line 2. Allocated Nonbusiness Interest.** Column 2: Total amount in Column 1 is allocated to New Mexico if the taxpayer's commercial domicile is in New Mexico.

**Lines 3 and 4. Allocated Nonbusiness Rents and Royalties.** Column 2: The following net rent and royalty income should be allocated to New Mexico if it is nonbusiness income:

1. Income from real property located in New Mexico;
2. Income from all tangible personal property if the taxpayer's commercial domicile is in New Mexico and the



entity is not organized under the laws of or taxable in the state where the property is used;

3. Income from tangible personal property that is used in New Mexico;

4. Income from intangibles (patents, copyrights, franchises, trademarks and licenses) used in New Mexico, and

5. Income from intangibles if the taxpayer's commercial domicile is in New Mexico but the income from the intangible is not taxable in the state where the intangible is used.

A patent is used in New Mexico if it is used in production, fabrication, manufacturing or other processing in New Mexico.

A copyright is used in New Mexico if printing or other production occurs in New Mexico.

**Line 5. Allocated Net Profit or Loss on the Sale or Exchange of Non-business Assets.** Column 2: The net gain or loss from the sale or exchange of the following should be allocated to New Mexico if it is nonbusiness income:

1. Real property located in New Mexico;
2. Tangible personal property located in New Mexico at the time it was sold;
3. Tangible personal property not located in New Mexico at the time it was sold if
  - a) the entity's commercial domicile is within New Mexico, and
  - b) the gain was not taxable in the state where the tangible personal property was located, and
4. Intangible personal property if the entity's commercial domicile is in New Mexico.

**Line 6. Allocated Nonbusiness Partnership Income.** Column 2: Nonbusiness partnership income should be allocated to New Mexico to the extent the partnership conducts business in this state.

**Line 7. Other Allocated Nonbusiness Income.** Attach a schedule to identify all other allocated income.

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## SCHEDULE PTE-C LINE INSTRUCTIONS

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### LINES 1 - 5. ALLOCATED AND AP- PORTIONED INCOME TAXED TO S CORPORATIONS

S corporations with federal taxable income must complete Schedule PTE-C. S corporations without federal taxable income should not complete this schedule.

**LINE 1A.** Enter net capital gains from federal Form 1120S, Schedule D, in column 1. Enter net capital gains allocated to New Mexico in Column 2.

Gains and losses from sales and exchanges of real property in New Mexico are allocated to New Mexico.

Gains and losses from sales and exchanges of tangible personal property are allocated to New Mexico if:

- (1) the property was in New Mexico at the time of sale, or
- (2) the taxpayer's commercial domicile is in New Mexico and the taxpayer is not taxable in the state in which the property was located.

Gains and losses from the sale of intangible property shall be allocated to New Mexico if the taxpayer's commercial domicile is in New Mexico.

**LINE 2.** Enter excess net passive income from the worksheet for line 22a. in the instructions for federal Form 1120S in Column 1. Enter excess net passive income allocated to New Mexico in Column 2.

**LINE 3.** Enter net recognized built-in gain from federal Form 1120S, Schedule D, in Column 1. Enter net recognized built-in gain allocated to New Mexico in Column 2.

**LINE 5.** Divide the amount on line 4, column 2, by the amount on line 4, column 1 and multiply by 100. Carry the percentage to four decimal places and round to four decimal places (example, 22.4653%). Enter the percentage on line 5 of PTE-C and on line 3 of the PTE.

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## PTE-D LINE INSTRUCTIONS

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### COLUMNS 1 - 7. OWNER INFORMATION

**Resident Owners Only:** For an entity with 100% of its business activity conducted in New Mexico, you may enter "100% New Mexico" on any line and attach copies of Federal K-1 Schedules for each resident owner rather than complete the PTE-D.

**COLUMN 3. Owner's Percentage.** Enter income percentage as disclosed on the owner's federal tax return Form 1065, Schedule K-1, or ownership percentage from federal tax return Form 1120S, Schedule K-1.

**COLUMN 4. Owner's Taxable Income.** Enter owner's taxable income amount by multiplying column 3 by PTE-D, line 1, for each owner. If Form PTE-D, line 1 is a loss, enter zero for each owner. If an owner has special allocation (for example, guaranteed payments), combine with amount computed from Form PTE-D, line 1.

**COLUMN 5. Resident.** Check box for owner that is a resident of New Mexico. A resident is an individual who is domiciled in this state. An owner that is an entity is a resident if the entity was organized under the laws of New Mexico.

**COLUMN 6. Withholding Taxes. Required for nonresident owners for whom a tax agreement (Form PTE-TA) is not held by the entity.** If column 5 "resident" box is checked, enter zero for each owner. If column 4 shows taxable income, and the entity holds no tax agreement, compute withholding tax by multiplying 5.7%\* by the amount in column 4 for each nonresident owner and enter the total taxes withheld on Line 5 of Form PTE.

*\*New: Beginning January 1, 2004, the rate of withholding by pass-through entities required to withhold from nonresident owners shall equal the maximum bracket rate set by Section 7-2-7 NMSA 1978 of the Personal Income Tax Act.*

**COLUMN 7. Hold Owner's Tax Agreement (Form PTE-TA).** If the entity holds a tax agreement executed by the owner, check the "Yes" box; no withholding tax is required for that owner. **Retain the New Mexico Nonresident Owner Income Tax Agreement, PTE-TA, in your records. Do not submit with the return.**

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### **NEW MEXICO NONRESIDENT OWNER TAX AGREEMENT (FORM PTE-TA)**

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Each nonresident owner may elect to file a New Mexico income tax return and make timely payments of all taxes imposed by the State of New Mexico with respect to its share of the New Mexico income of the entity. An individual is a nonresident if the individual is not a resident of this state. An owner entity is a nonresident owner if the owner entity was organized under the laws of another state. In the absence of actual knowledge, the pass-through entity may rely on the mailing address of the owner to determine residence. The nonresident owner must complete and sign a nonresident owner tax agreement (Form PTE-TA) if the owner elects to file its own income tax return. PTE-TA Forms may be obtained from the New Mexico Taxation and Revenue Department. A copy of Form PTE-TA must also be kept on file with the pass-through entity.

The pass-through entity shall provide to

each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act with respect to the owner's share of net income.

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### **CONSISTENCY IN REPORTING**

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An entity is required to be consistent in: 1) classifying income as allocable or apportionable; 2) the valuation of property and its inclusion in the property factor; 3) the treatment of compensation for the payroll factor, and 4) the exclusion or inclusion of receipts in the sales factor for returns filed in all states.

Any change or inconsistency from prior-year returns must be disclosed in a statement attached to the return. Identify the amounts and reasons for the changes or inconsistencies.

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### **PETITION PROCEDURE OPEN TO TAXPAYER**

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If the above procedures for allocation and apportionment do not fairly represent the extent of the taxpayer's business activity in New Mexico, the taxpayer may petition, or the Secretary of Taxation and Revenue may require, that another method be used to apportion or allocate all or any part of the taxpayer's business income.

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### **AFTER YOU FILE YOUR RETURN**

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If your return shows an overpayment and you have requested that all or a portion of the overpayment be refunded to you, please allow at least 12 weeks for processing before contacting the Department. Processing time will vary according to when you file your return. Occasional computation errors in a tax return will delay processing or result in adjustments to your refund or the amount you owe. If you disagree with any adjustment made by the Department, you should follow the procedures in publication FYI-400, *Tax Audits and Protest Procedures - Your Rights as a Taxpayer*.

At any time after filing your return, it may be subject to further review, verification or correction. The state of New Mexico, pursuant to reciprocal information exchange agreements, exchanges information with the Internal Revenue Service, certain other state agencies and taxing authorities in other states. If your tax return is adjusted or an assessment of additional tax is issued, you will be provided a description of your rights as a taxpayer. Our publication FYI-400, *Tax Audits and Protest Procedures - Your Rights as a Taxpayer*, describes in detail how to dispute an adjustment or assessment made by the Department through either the claim for refund procedure or the protest procedure. Publication FYI-400 is available by contacting your local district tax office or by downloading from the Department web site at [www.state.nm.us/tax](http://www.state.nm.us/tax). Click on "publications".

**Reminder:**  
**Write your correct federal identification number (FEIN)**  
**on ALL forms, schedules, payments and correspondence.**

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# New Mexico Taxpayer Bill of Rights

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Most tax transactions happen without incident. In an imperfect world, however, occasional disagreements occur through misunderstanding, mathematical error, missed deadlines, misplaced papers, high volume of transactions and many other situations. Over the years the Legislature and the Department have established ways to handle difficulties according to the provisions of the state tax code. Following are some of your rights. Should you wish to consult the law itself, you will find it in Sections 7-1-4.1 through 4.3 NMSA 1978:

- The right to available public information and prompt and courteous tax assistance;
- The right to representation and advice by counsel or other qualified representatives at any time during your interactions with us according to provisions of Section 7-1-24 NMSA 1978;
- The right to have audits, inspections of records and meetings conducted at a reasonable time and place according to Sec. 7-1-11 NMSA 1978;
- The right to simple, non-technical information explaining procedures, remedies and rights during audit, protest and collection proceedings under the Tax Administration Act;
- The right to receive an explanation of audit results and the basis for audits, assessments or denials of refunds that identify tax, interest or penalty due;
- The right to seek review through formal or informal proceedings of findings or unfavorable decisions arising from determinations during audit or protest procedures according to Sec. 7-1-24 NMSA 1978;
- The right to have your tax information kept confidential unless otherwise specified by law in Sec. 7-1-8 NMSA 1978;
- The right to an abatement of an assessment of taxes incorrectly, erroneously or illegally made (Sec. 7-1-28 NMSA 1978) and a right to

seek a compromise of an asserted tax liability. When the Secretary of Taxation and Revenue in good faith doubts that you owe us what we claim you owe, you also have the right to seek a compromise if one exists in your particular case (Sec. 7-1-20 NMSA 1978);

- The right to clear information of the consequences if a tax assessment is not paid, secured, protested or otherwise provided for according to Sec. 7-1-16 NMSA 1978. If you become a delinquent taxpayer, upon notice of delinquency you have the right to timely notice of collection actions that require sale or seizure of your property under the Tax Administration Act, and
- The right to pay your tax obligations by installment payment agreements according to the provisions of Sec. 7-1-21 NMSA 1978.

## Confidentiality Provisions:

Statutes regulating the confidentiality of your taxes continue to be strict. Sec. 7-1-8 NMSA 1978 requires the department to answer questions about whether a taxpayer is registered to do business in this state or is registered for other tax programs, but it does not allow employees to reveal whether you have filed a return. A hearing officer's written ruling on questions of evidence or procedure according to Sec. 7-1-24 NMSA 1978 may be made public, but not the name and identification number of the taxpayer requesting the ruling. Now included in public record are the monthly gasoline tax reports of numbers of gallons of gasoline and ethanol-blended fuels received and deducted, and the tax paid by each filer or payer of the tax. Identities of rack operators, importers, blenders, suppliers or distributors and the number of gallons of gasoline and other fuels are public record. The department may make known to the Gaming Control Board the tax returns of license applicants and their affiliates.

## Audit Provisions:

We must provide you with written, dated notice that an audit is about to begin on a specific date, and the notice must tell you which tax programs and reporting periods will be covered. We must issue a second notice, which states any outstanding records or books of account requested and not yet received, between 60 and 180 days after the audit begins. If you do not produce the records within 90 days, the department can issue an assessment of tax on the basis of the information as it stands. If you need additional time, you must submit a specific request in writing. Interest on outstanding liabilities accrues if the department does not issue an assessment within 180 days of the notice of outstanding records or books, or within 90 days after time has expired under your request for additional time; however, you are entitled to an abatement of interest for the period of time after you have complied with department requests and the department has not acted on the audit.

## Administrative Hearing Procedures:

A department hearing officer may not engage as an employee in enforcing or formulating general tax policy other than to conduct hearings. You may request the Secretary to determine if a hearing officer's activities have affected his or her impartiality, and the Secretary may assign the case to another hearing officer. Hearing officers may not communicate unilaterally about a matter you have protested while that matter is still pending. The Secretary may appoint another hearing officer if that occurs. You may request a written ruling on any contested question of evidence in matters in which you have filed a pending written protest. You also may request that two or more protests on related issues be combined and heard jointly, and the hearing officer shall grant the request unless it creates an unreasonable burden on the department.

**Credit Claims:**

The department has 180 days from the filing date to approve or deny a statutory tax credit. If it does not act, the credit is approved. The Secretary decides whether a refund of tax due you may be offset against your other tax liabilities, and you will receive notice that the refund will be made accordingly. You are entitled to interest until the tax liability is credited with the refund amount. Please see the paragraph above on "Audit Provisions" for interest due you if the department does not offset a refund or credit against your other tax liabilities within the prescribed time. The department may make a di-

rect refund of overpaid taxes to the taxpayer without requiring the taxpayer to file a refund claim. The department does not have to pay interest on credits or refunds if it applies the amount to a tax interception program, to an estimated payment, or to offset prior liabilities of the taxpayer.

**Awarding of Costs and Fees:**

If you prevail in an administrative or court proceeding brought by you or against you after July 1, 2003, under the Tax Administration Act, you will receive a judgment or a settlement for reasonable administrative costs connected to the action.

**Penalty:**

The department may not assess penalty against you if you fail to pay tax when due because of a mistake of law made in good faith and on reasonable grounds. If the Secretary determines that it is unfair to hold a spouse or former spouse liable for payment of unpaid taxes, the Secretary may decline to take action against the spouse or former spouse of the person who actually owes the tax. In extreme cases of delinquency under Sec. 7-1-53 the department may enjoin a taxpayer from continuing in business after a hearing and until the delinquency is cleared.